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REGAL STONE, LTD. and M/V COSCO BUSAN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT CALIFORNIA

CHELSEA, LLC, MARK RUSSO, ALLEN
LORETZ, and IVAN SIMPSON,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

REGAL STONE, LTD., HANJIN
SHIPPING, CO., LTD., CONTI CAIRO
KG, NSB NEIDERELBE, SYNERGY
MARITIME, LTD., *IN PERSONAM*, M/V
COSCO BUSAN, their engines, tackle,
equipment, appurtenances, freights, and
cargo *IN REM*,

Defendant.

Case No. C 07 05800 (SC)

**DEFENDANT REGAL STONE, LTD.'S
NON-OPPOSITION AND RESPONSE
TO PLAINTIFFS' MOTION FOR
LEAVE TO AMEND VERIFIED FIRST
AMENDED COMPLAINT**

KYL_SF463408

1 Defendant and Claimant Regal Stone Limited ("Regal Stone" or
 2 "Defendant") does not oppose Plaintiff's Motion for Leave to Amend ("Motion") to the
 3 extent that it properly dismisses NSB Neiderelbe ("NSB") and Conti Cairo ("Cairo") as
 4 defendants. However, to the extent that Plaintiff's Motion misstates the nature of
 5 discussions and content of correspondence between the parties, Defendant submits the
 6 following response for the Court's clarification.

7 Plaintiffs named NSB Neiderelbe ("NSB") and Conti Cairo ("Conti") as
 8 defendants in this action due to the mistaken belief that NSB and Conti owned and/or
 9 managed the COSCO BUSAN at the time of the oil spill on November 7, 2007. In fact,
 10 Conti sold the COSCO BUSAN to Defendant Regal Stone on October 24, 2007, before the
 11 spill which occurred on November 7, 2007. Conti as former owner, and NSB as former
 12 manager had no relationship to the vessel at the time of the spill and thus are improper
 13 parties to this lawsuit. This information was communicated to Plaintiffs' counsel
 14 verbally.¹ Beginning in March 2008, Conti and NSB provided Plaintiffs with documents
 15 proving that Conti and NSB did not own or manage the COSCO BUSAN at the time of
 16 the oil spill, including the following:

17 1. Bill of Sale for the COSCO dated October 15, 2007 showing the
 18 Transferor as Conti and the Transferee as Regal Stone, Ltd.

19 2. Certified copy of the "Transcript of Register" from the Hong Kong
 20 Marine Department dated October 30, 2007 showing the owner of the COSCO BUSAN
 21 as Regal Stone, Ltd.

22 3. Ship Management Agreement between Conti and NSB which
 23

24 ¹ Initially, Keesal, Young & Logan was retained to represent Regal Stone Limited and M/V COSCO
 25 BUSAN in this lawsuit. Thereafter, Keesal, Young & Logan began to act on NSB and Conti's behalf for
 26 the limited purpose of communicating to Plaintiffs' counsel that NSB and Conti were improper parties to
 27 this action and requesting that Plaintiffs voluntarily dismiss them. Based on the conversations between
 28 the parties regarding this issue, NSB and Conti understood that if appropriate documentation was
 provided showing that they did not own or operate the COSCO BUSAN at the time of the spill, Plaintiffs
 would voluntarily dismiss NSB and Conti. Based on this understanding, NSB and Conti did not proceed
 with retaining separate counsel to represent them in this litigation.

1 includes a provision that "This agreement shall end with the sale or total loss of the
2 vessel."

3 4. Declarations signed by the President of NSB and the managing
4 directors of Conti stating that Conti sold the vessel before the spill and that NSB and
5 Conti's obligations terminated with the sale of the vessel.

6 5. Documentation evidencing the cancellation of insurance coverage
7 obtained for the benefit of NSB and Conti.

8 See, Declaration of Annie Moriarty ("Moriarty Decl."), ¶¶ 2-5 and Exhibits 1, 2, 3
9 attached thereto. Despite this overwhelming evidence, Plaintiffs initially refused to
10 acknowledge the need to dismiss NSB and Conti.

11 At the Case Management Conference on April 25, 2008, Plaintiffs' counsel
12 finally acknowledged that NSB and Conti were improper parties and proposed that if the
13 parties could work out a "tolling agreement" Plaintiffs would voluntarily dismiss NSB
14 and Conti in light of evidence that these entities did not own or operate the vessel at the
15 time of the spill. See, Moriarty Decl., ¶ 6. The following Wednesday (April 30, 2008),
16 Plaintiffs' counsel advised then that he was "working on the tolling agreement." See, E-
17 mail from William Audet to Annie Moriarty, dated April 30, 2008, attached as Exhibit 4
18 to the Declaration of William Audet ("Audet Decl."). NSB and Conti waited for Plaintiffs
19 to provide a draft of the tolling agreement. Unfortunately, Plaintiffs never provided a
20 draft. Instead, despite previously agreeing to dismiss NSB and Conti, Plaintiffs changed
21 their position and stated that they were willing to "consider dismissal provided [there
22 was] no objection to 'substituting' Fleet Management as a defendant." See, E-mail from
23 William Audet to Annie Moriarty, dated May 7, 2008, attached as Exhibit 4 to the Audet
24 Decl. Although Plaintiffs had acknowledged that NSB and Conti were improper parties,
25 they were now essentially holding NSB and Conti as hostages in the lawsuit.²

26
27 ² Plaintiffs' counsel may have inadvertently misunderstood the relationship between Fleet Management,
28 NSB, Conti and Keesal, Young & Logan. Regardless, Plaintiffs' request to "substitute" Fleet Management
as a Defendant further delayed NSB and Conti's dismissal.

1 Expecting further delays by Plaintiffs if NSB and Conti insisted that
2 Plaintiffs honor their initial agreement to voluntarily dismiss NSB and Conti pursuant
3 to a tolling agreement, counsel for Regal Stone, Limited obtained authority and agreed
4 to accept service on behalf of Fleet Management in order to expedite NSB and Conti's
5 long overdue dismissal. See, Exhibit 5 attached to the Audet Decl. On May 27, 2008,
6 Plaintiffs provided a draft stipulation allowing Plaintiffs to file an amended complaint.
7 See, Moriarty Decl. ¶ 7 and Exhibit 4 attached thereto. Defendants simply requested
8 that Plaintiffs provide a copy of the proposed amended copy before agreeing to such a
9 stipulation simply so that Defendants would know what they were stipulating to. See,
10 Exhibit 5 attached to the Audet Decl., and Moriarty Decl. ¶ 8 and Exhibit 5 attached
11 thereto.

12 Finally, on June 6, 2008 (over a month after Plaintiffs' counsel represented
13 that Plaintiffs would voluntarily dismiss NSB and Conti if a tolling agreement could be
14 worked out), Plaintiffs provided a copy of their proposed amended complaint. The
15 proposed amended complaint went far beyond simply adding Fleet Management as a
16 Defendant and dismissing NSB and Conti – the only changes that had been previously
17 discussed. Instead, the complaint contained a number of significant substantive changes
18 including (1) the broadening of the class' definition, (2) several additional factual
19 allegations, (3) three new causes of action, (4) the addition of a section titled "Joint and
20 Several Liability", and (5) a significant expansion of Plaintiffs' prayer regarding punitive
21 damages.

22 Defendants informed Plaintiffs that Defendants simply could not stipulate
23 to the filing of the proposed amended complaint as drafted and pressed Plaintiffs to
24 honor their promise to dismiss NSB and Conti. See, Exhibit 7 attached to the Audet
25 Decl. After meeting and conferring on Thursday, June 12, 2008, the parties were unable
26 to agree on a stipulation. Plaintiffs filed this Motion the following Monday, June 16,
27 2008.

1 In their Motion, Plaintiffs mischaracterize the nature of the discussions
2 between the parties regarding the amendment of the Complaint. The discussions
3 between the parties, at all times prior to Defendants' receipt of the proposed amended
4 complaint, related only to the dismissal of NSB and Conti. Plaintiffs received evidence
5 and acknowledged that NSB and Conti were improper parties to this lawsuit. Nearly
6 three months after Plaintiffs received documentation showing that NSB and Conti did
7 not own or operate the COSCO BUSAN at the time of the spill, these entities remain as
8 improper parties in this lawsuit.

9 Plaintiffs' proposed Second Amended Class Action Complaint dismisses
10 NSB and Conti from this lawsuit. The dismissal is long overdue and Defendant wishes
11 to make clear to the Court that there is no objection to that amendment.

12
13 DATED: JULY 3, 2008



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16 Attorneys for:
17 Defendant and Claimant to Defendants
18 REGAL STONE, LTD. and M/V COSCO BUSAN
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